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**2001 Wis Eth Bd 01**  
LOCAL CODE -- DISQUALIFICATION  
LOCAL CODE -- IMPROPER USE OF OFFICE

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The Ethics Board advises:

- (1) that local governmental officials should not accept free or discounted admission to events at a facility owned by the local governmental unit;
- (2) that, except as just stated, statutes administered by the Ethics Board are not an obstacle to the facility's oversight authority using, for the conduct of official business, a conference room that looks out on events;
- (3) that a local governmental official may not use the conference room for a non-governmental purpose unless the use of private rooms, or admission to private rooms, is for sale to the general public for the pertinent event, and then only under the same terms and conditions available to the public; and
- (4) that statutes administered by the Ethics Board are not an obstacle to the local governmental unit's making the conference room available to charitable organizations; however, a local governmental official should not use his or her position to arrange for use of the conference room by an organization of which the official is an officer, director, or authorized representative or agent. Because the room is a public facility, other laws may govern the room's use.

Facts

- ¶1 This opinion is based upon these understandings:
- a. You are an attorney for a local unit of government.
  - b. The governmental unit is constructing a facility which will hold events to which the public will be charged admission.
  - c. The governmental unit has entered into a lease agreement with a company that will use the facility.
  - d. Under the lease, the company is required to provide the governmental unit with office space in the facility.
  - e. The company proposes to provide the governmental unit with a conference room that has a view of the area where events are held.

- f. The governmental unit has drafted a proposed policy on use of the conference room.
- g. The draft policy permits the local governmental unit's oversight authority for the facility or an individual member of the oversight authority to use the conference room for government business during events. In this circumstance, a member will not pay for admission, parking, or reasonable food and beverages.
- h. The draft policy also permits a member to use the conference room for private benefit during other events. In this circumstance, a member will be responsible for the cost of admission, parking, food, and beverages.
- i. The draft policy further permits use of the conference room by charitable organizations when there is a recognized benefit to the governmental unit. The governmental unit will adopt a policy to govern such use in the future.

### Question

¶2 The Ethics Board understands your question to be:

Is the local governmental unit's proposed policy on use of the conference room consistent with §19.59, *Wisconsin Statutes*?

### Discussion

¶3 *Applicable statute*

The statute most pertinent to your question is §19.59(1)(a), *Wisconsin Statutes*. This statute provides:

**19.59 Codes of ethics for local government officials, employees and candidates. (1)(a)** No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball or football game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229 or a local professional football stadium district created under subch. IV of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

¶4 Section 19.59(1)(a), reduced to its elements, provides:

No local public official  
May use his or her office or position  
To obtain anything of substantial value  
For private benefit.

¶5 The local governmental unit's proposed policy for use of the conference room contemplates: (1) using the conference room for conducting district business; (2) permitting members of the oversight authority to use the conference room for a private purpose during events; and (3) making the conference room available to charitable organizations.

¶6 *Use of the conference room for government business*

Because using the conference room to conduct government business is for a public, not a private, benefit, statutes administered by the Ethics Board are not an obstacle to the local governmental unit's using its office to conduct such business.<sup>1</sup>

¶7 *Use of the conference room for a private purpose*

The proposed policy provides that a member of the oversight authority using the conference room for a private purpose will pay admission to the facility. Section 19.59(1)(a) forbids a local public official to use his or her public office or position to obtain anything of substantial value for private benefit.<sup>2</sup> This means that a member of the oversight authority may use the conference room for a private purpose only if such rooms with a view of the area where events are held, or admission to such rooms, are otherwise for sale to the general public for the pertinent event and the member's admission and use of the room are under the same terms and conditions available to the public.<sup>3</sup>

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<sup>1</sup> The statutory restriction does not apply when an item or service is primarily for public benefit, and not primarily for private benefit. *See, e.g.*, 1997 Wis Eth Bd 13, ¶5; 8 Op. Eth. Bd. 50 (1985); 6 Op. Eth. Bd. 12 (1982); 2 Op. Eth. Bd. 47 (1978).

<sup>2</sup> A "local public official" includes an individual who holds (1) an appointive office of a local governmental unit in which an individual serves for a specified term or (2) an appointive office that is filled by the governing body of the local governmental unit in which the incumbent serves at the pleasure of the appointing authority. §19.42(7w), (7x), *Wisconsin Statutes*.

<sup>3</sup> 1998 Wis Eth Bd 15, ¶7. Thus, for example, if private rooms for viewing an event are made available to the general public for a specific event, a member may use the local governmental unit's conference room upon payment to the local governmental unit of the amount charged for a comparable room. If rooms are not made available on a single-event basis, then members should not use the local governmental unit's conference room to attend that event. Thus, it would not be appropriate to prorate the yearly cost of a private room or the cost of

¶8 *Making the conference room available to charitable organizations*

Laws administered by the Ethics Board do not restrict the local governmental unit to make the conference room available to charitable organizations.<sup>4</sup> However, because the conference room is a public facility, use of the room may be restricted by §11.36(3) and (4), *Wisconsin Statutes*, or by other laws.

Advice

¶9 The Ethics Board advises:

- (1) that local governmental officials should not accept free or discounted admission to events;
- (2) that, except as just stated, statutes administered by the Ethics Board are not an obstacle to the facility's oversight authority using, for the conduct of official business, a conference room that looks out on events;
- (3) that a local governmental official may not use the conference room for a non-governmental purpose unless the use of private rooms, or admission to private rooms, is for sale to the general public for the pertinent event, and then only under the same terms and conditions available to the public; and
- (4) that statutes administered by the Ethics Board are not an obstacle to the local governmental unit's making the conference room available to charitable organizations; however, a local governmental official should not use his or her position to arrange for use of the conference room by an organization of which the official is an officer, director, or authorized representative or agent. Because the room is a public facility, other laws may govern the room's use.

WR1082

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individual seats in a private room, if private rooms are not made available on a single-event basis.

<sup>4</sup> A local governmental official should not use his or her position or participate in a decision to make the room available to an organization with which the official or a member of the official's immediate family is associated as an officer, director, or authorized representative or agent. §19.59(1)(a) and §19.42(2), *Wisconsin Statutes*.